IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1046 OF 1989

WITH

CROSS OBJECTION ST.NO.11542 OF 1990

The State of Maharashtra. ... Appellant.

V/s.

1. Smt.Vijaya Subhash Kabare
r/o Dapodi, Dist.Pune.

2. Smt.Nalini Yashwant Sakhare
r/o Panvel, Dist.Raigad.

3. Smt. Pramila Yashwant Sakhare.
r/o Panvel, Dist.Raigad. ... Respondents.

Mrs. Mulekar, AGP for Appellant

Mr. R.L.Patil for Respondents No.1 to 3.

Coram: Smt.Nishita Mhatre, J.

Dated: 29th October, 2004.

ORAL JUDGMENT:

. The present first appeal has been filed against impugned Judgment and Order of the Civil Judge, Sr.Division, Alibag District Raigad in LAR No.104 of 1986. The Reference Court enhanced the compensation by directing that the amount of Rs.1,51,145.75 should be paid to the claimants including solatium and compensation under section 23(1A) and interest in accordance with the Section 28 of the Land Acquisition Act(hearinafter referred to as the Act.) The court has awarded interest at the rate of 9% per annum on the

amount of Rs.1,10,527.20 from the date of the order till realisation of the whole amount as well as costs for the claimants.

2. The Special Land Acquisition Officer, Metro Centre No.I has acquired an area of 3440 square mtrs. out of survey No.59 Hissa No.1(2) belonging to the respondents for the New Bombay Project. This land was situated in Asudgaon. A notification was issued under section 4 of the Act on 3rd February, 1970 and was published in the Gazette on the next day. An award has been made on 11th October, 1984 awarding compensation at the rate of Rs.1.50 per square meter. Aggrieved by the award, the claimants filed reference on 25th October, 1985. A notice under section 12(2) of the Act was issued on 16th September, 1985. The Reference Court has enhanced the compensation to Rs.12/- per square meters and has also awarded compensation under section 23(1A) of the Land Acquisition Act.

3. Mrs. Mulekar, AGP for the State Government submits that the appeal has been preferred after the period of limitation under section 18 of the Act. According to her since the award is made on 11.10.1984, the reference should have been filed within 6 months thereafter although the notice under section 12(2) was issued on 16th September, 1985. She submits that a

proper interpretation of the proviso to section 18 of the Act indicates that the application must be preferred under the section either within 6 months from the award or within 6 weeks from the receipt of the notice under section 12(2) whichever is earlier. According to her, there is no provision for condoning the delay in preferring the application for reference since the Limitation Act does not apply. She relies on the judgment in case of **Officer on Special Duty V/s. Shah Manilal Chandulal etc. reported in 1996(1) Mh.L.J.609** in support of her submission.

4. Mr. Patil, the learned advocate appearing for the respondents submits that the issue regarding limitation was not raised either before the Reference Court nor has it been raised as a ground in the Appeal memo. According to him, without such a ground being taken in the appeal memo, the question regarding delay need not be considered by this court. He submits that assuming that such a point can be raised without a ground being specifically taken in the appeal, the claimants must have knowledge of the award passed and it is only thereafter that the limitation would run. He submits that the notice under section 12(2) is mandatory and the Collector is expected to issue the notice to the claimant after passing of the award. In the present case, the notice was issued only on 16th September,

1985. A reference was filed on 25th October, 1985 i.e. within period of 6 weeks from the notice under Section 12(2) being received, as required under the proviso to Section 18 of the Act. In respect of the cross-objection filed by the claimants, he submits that the claimants have claimed Rs.20/- per square meter on the basis of the valuation report which is filed before the Reference Court. He submits that in any event in case of lands acquired in Asudgaon village, Division Bench of this Court in First Appeal No.494/86 has already decided that an amount of Rs.15/- per square meter is the appropriate compensation. He therefore, submits that the claimants would be entitled to Rs.15/- in any case.

5. A perusal of the impugned Judgment indicates that the State had not raised a contention regarding limitation before the trial court nor has the State raised this issue or ground in the present appeal. It is for the first time that the issue regarding limitation is being raised across the bar by the learned AGP. In my view, the question of limitation goes to the root of the matter and could be raised at any time. However, such a ground is required to be taken in the first appeal and cannot be raised across the bar as the respondent would not be put to notice in respect of this ground of challenge to the impugned judgment.

6. Assuming that the question of limitation can be raised during the course of oral submissions, I am not inclined to accept the submission made by the learned AGP. The proviso to Section 18 reads as under :

> 18. Reference to Court-(1)....
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> (2) The application shall state the grounds on which objection to the award is taken :
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> Provided that every such application shall be made -
>
> (a) if the person making it was present or represented before the Collector at the time when made his award, within six weeks from the date of the Collector's award;
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> (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section(2); or within six months from the date of the Collector's award, whichever period shall first expire.

These provisions indicate that if a person is present when the award is made by the Collector, limitation starts to run from the date the Collector declares the award and reference must be preferred within 6 weeks from that date i.e. date of the Collector's award. However, in other cases, it is only after notice is received under section 12(2) that the reference must be preferred within 6 weeks of the receipt of the notice.

In the event when the collector makes the award, the claimant must prefer reference within 6 months from the date of the collector's award, whichever period shall first expire. The submission of Mrs. Mulekar that irrespective of whether a party had knowledge of the award, reference must be preferred within 6 months from the date of the award cannot be accepted. Without the knowledge of the award it would be impossible for the claimant to prefer a reference. It is held by the Apex Court in the case of **Raja Harish Chandra Raj singh V/s The Deputy Land Acquisition Officer reported in AIR 1961 Supreme Court 1500** that the award of the Collector is an offer to the claimant and therefore it involves communication of the offer to the party whose land is sought to be acquired. It is a statutory right given to the party under section 18 which cannot be defeated merely making award without any knowledge to the claimant. Limitation will therefore run only after communication of the information of such award. The section provides that if the notice under section 12(2) of the Act is received before the copy of the award, that is sufficient notice and the limitation would run from the date of the receipt of the notice under section 12(2) of the Act by the party. In the case of **State of Panjab V/s Mst. Qaisar Jehan Begum reported in AIR 1963 Supreme Court 1604,** the Supreme Court while interpreting clause(b) to the proviso to Section 18 has held thus :-

(5) As to the second part of cl.(b) of the proviso, the true scope and effect thereof was considered by this court in Harish Chandra's case, 1962-1 SCR 676 : (AIR 1961 SC 1500)(supra). It was there observed that a literal and mechanical construction of the words "six months from the date of the Collector's award" occurring in the second part of cl.(b) of the proviso would not be appropriate and "the knowledge of the party affect by the award, either actual or constructive, being an essential requirement of fair play and natural justice, the expression.... used in the proviso must mean the date when the award is either communicated to the party or is know by him either actually or constructively" Admittedly the award was never communicated to the respondents. Therefore the question before us boils down to this. When did the respondents know the award either actually or constructively ? Learned counsel for the appellant has placed very strong reliance on the petition which the respondents made for interim payment of compensation on December 24,1954. He has pointed out that the learned Subordinate Judge relied on this petition as showing the respondents' date of knowledge and there are no reasons why we should take a different view. It seems clear to us that the ratio of the decision in Harish Chandra's case, 1962-1 SCR 676 :(AIR 1961 SC 1500)(supra) is that the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge. Now, knowledge of the award does not mean a mere knowledge of the fact that and award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under S.12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in court either personally or through his

> representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award. Looked at from that point of view, we do not think that it can be inferred from the petition dated December 24, 1954 that the respondents had knowledge of the award."

7. In my view, therefore, the reference has been preferred within the period of limitation stipulated under the proviso to the section 18 of the Act. The reference has been filed on 25th October, 1985 which is within 6 weeks of notice under section 12(2) being issued to the respondents. The First Appeal is thus without any substance and is dismissed.

8. Cross-objection preferred by the respondents will now have to be considered. Under the cross-objection, the respondents have claimed Rs.20/- per square meter. The Division Bench of this court in First Appeal No. 494 of 1986 has already held that Rs. 15/- per square meter is the just and fair compensation for acquisition of land situated in Asudgaon village. The SLAO by his award had granted Rs.1.50 per square meter. This amount was enhanced to Rs.12/- per square meter in the reference. According to me therefore since the acquired lands are in Asudgaon village, Rs.15/- per square meter would be the proper compensation. However, submission

of Mrs. Mulekar that development charges must be deducted is accepted in view of the pronouncements of the Supreme Court in this regard. In my view, deduction of Rs.1/- per square meter towards development charges would be appropriate.

9. In this view of the matter, First Appeal No.1046 of 1989 is dismissed. Office to number the Cross-objections. Cross-objection are allowed to the aforesaid extent. Respondents are entitled to Rs.15/- per square meter and Rs.1/- per square meter would be deducted as development charges. The Respondents shall be paid the amount within 12 weeks from today.

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